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8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE DISTRICT OF ARIZONA**

10 In re Bard IVC Filters Products Liability
11 Litigation

12 No. MD-15-02641-PHX-DGC

13 **AGREED MOTION TO ESTABLISH
THE BARON & BUDD BARD IVC
QUALIFIED SETTLEMENT FUND AND
TO APPOINT FUND ADMINISTRATOR**

14 COMES NOW, Baron & Budd, P.C. (“Claimants’ Counsel”) and hereby files this Agreed
15 Motion to Establish a Qualified Settlement Fund and Appoint a Fund Administrator (the
16 “Motion”) and respectfully moves this Court for an Order to (a) establish a fund, which shall be
17 called the Baron & Budd Bard IVC Qualified Settlement Fund (the “Fund”), and (b) appoint a
18 Fund Administrator. In support of this Motion, Claimants’ Counsel respectfully states as follows:

19 1. Charles G. Orr, Shareholder at Baron & Budd, P.C., represents plaintiffs and other
20 individuals, collectively “Claimants,” who are asserting claims and seeking damages arising out
21 of certain alleged acts and events against Defendant C. R. Bard, Inc.

22 2. Defendant C. R. Bard, Inc., including Defendant’s parent companies, affiliates,
23 subsidiaries, and any and all other of its past, present, and future related entities (collectively,
24 “Bard”), is alleged to be liable for Claimants’ claims.

25 3. Bard denies any and all liability to Claimants. In an effort to resolve their
26 outstanding disputes, the Parties entered into a confidential “Master Compromise, Settlement,
27 Release and Indemnity Agreement” between Bard, on the one hand, and Claimants’ Counsel on

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1 the other hand (hereinafter the “Master Settlement Agreement”). Bard entered into the Master
2 Settlement Agreement solely to avoid the expense, inconvenience, and burden of litigation, and
3 the distraction and diversion of its personnel and resources; and has done so without admission of
4 liability or wrongdoing.

5 4. Bard has agreed to pay to the Fund a confidential settlement amount (“Settlement
6 Amount”) in full settlement and discharge of all of the Claimants’ claims and in exchange for a
7 full release and discharge and satisfaction of other settlement requirements by Claimants, as set
8 forth in the Master Settlement Agreement and the Confidential Settlement Agreement and Release
9 (hereinafter, the “Release”). The Master Settlement Agreement contemplates that the exact
10 allocation among, and distribution to, the Claimants in settlement of their claims will be finalized
11 at a future time based upon determinations that have yet to be made, which include consideration
12 of the circumstances of the individual Claimants. Furthermore, the final reimbursement amount,
13 if any, alleged by Medicare, Medicaid and or private lien holders with respect to these claims is
14 also yet to be determined. The Parties, therefore, ask this Court to order the establishment of the
15 Fund to facilitate resolution of those claims through collection, allocation, final disbursement, and
16 accounting of settlement proceeds and to appoint a Fund Administrator in connection with these
17 activities.

18 5. Upon establishment of the Fund, and pursuant to the terms of the Master
19 Settlement Agreement, Bard shall pay or cause to be paid the agreed-upon Settlement Amount
20 into the Fund by wire transfer or check made payable to the Fund. All aspects of the
21 administration of the Fund shall remain subject to the jurisdiction of the Court until such time as
22 the Fund has settled all eligible claims according to the terms of the Master Settlement
23 Agreement.

24 6. The Fund shall be a Qualified Settlement Fund as described in Treas. Reg. Section
25 1.468B-1, established by order of this Court, and the Fund shall remain subject to the continuing
26 jurisdiction of this Court until such settlement payments are distributed to eligible claimants
27 according to the terms of the Master Settlement Agreement. Settlement payments within the
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1 Fund will be held in a fiduciary capacity. The Fund shall comply with the Treasury Regulations
 2 Section 1.468B-1 et seq. regarding taxation and tax reporting obligations.

3 7. This Court shall have jurisdiction over this matter under Treas. Reg. Section
 4 1.468B-1(c)(1), which states in relevant part that a Qualified Settlement Fund “is established
 5 pursuant to an order of, or is approved by, the United States, any state (including the District of
 6 Columbia), territory, possession, or political subdivision thereof, or any agency or instrumentality
 7 (including a court of law) of any of the foregoing and is subject to the continuing jurisdiction of
 8 that governmental authority.” The Fund Administrator and/or its attorneys shall be indemnified
 9 and held harmless against reasonable expenses, costs and fees (including attorney fees),
 10 judgment, awards, and liabilities of all kinds incurred by the Fund Administrator from any and all
 11 claims made by any person or entity that attempts to assert a right of payment, reimbursement or
 12 garnishment against the Fund, except to the extent that it is finally determined by this Court that
 13 the Fund Administrator and/or its attorneys was/were negligent or acted with willful misconduct
 14 in connection with the administration of this Fund.

15 8. Claimants request that the Court approve the appointment of ARCHER Systems,
 16 LLC (“ARCHER”) as the Fund Administrator (the “Fund Administrator”). ARCHER possesses
 17 comprehensive knowledge and experience administering qualified settlement funds. ARCHER
 18 submits to the personal jurisdiction of this Court. The Fund Administrator shall, upon request,
 19 prepare and deliver to the Court such reports related to the administration of the Fund as the Court
 20 may request from time to time. ARCHER’s address is as follows: 1775 St. James Place, Suite
 21 200, Houston, TX 77056.

22 9. With the approval of and upon an order of this Court, the Fund shall fully settle,
 23 subject to the satisfaction of all applicable terms and conditions as set forth in the Master
 24 Settlement Agreement, all eligible claims. No settlement proceeds shall be set apart for any
 25 individual Claimant, or otherwise made available so that he or she may draw upon or otherwise
 26 control said settlement proceeds until such time as the Release is executed by such Claimant and
 27 all other applicable terms and conditions are satisfied, in accordance with the Master Settlement
 28 Agreement.

1 10. Subject to satisfaction of all applicable terms and conditions set forth in the Master
 2 Settlement Agreement and the Release, the Fund shall be liable to make payments to eligible
 3 claimants in the manner so specified in the Master Settlement Agreement.

4 11. In some circumstances, Claimants may elect a structured settlement annuity.
 5 Likewise, Claimants' Counsel may elect to place all or a portion of their contingent legal fees into
 6 one of several types of tax-advantaged investments as Plaintiffs' attorneys have the ability defer
 7 fees until a later taxable year.¹ To facilitate Claimants' structured settlements or attorney fee
 8 structure(s), if any, the Fund, by and through the Fund Administrator, may purchase and assign
 9 structured settlements whether "qualified"² or "non-qualified."³ Any "qualified" structured
 10 settlement shall be issued by a life insurance company that holds an issuer credit rating equivalent
 11 to a National Association of Insurance Commissioners NAIC 1 designation.

12 12. Claimants request that no bond be required, provided the Fund, which includes all
 13 principal and interest earned thereon, shall be deposited in an account comprised of (a) any
 14 obligations of, or any obligation guaranteed as to principal and interest by, the United States of
 15 America or any agency or instrumentality thereof, including the Federal Deposit Insurance
 16 Corporation; or (b) U.S. dollar denominated deposit accounts with domestic commercial or
 17 national banks that have a short term issuer rating on the date of purchase of "A-1" or better by
 18 S&P or "Prime-1" or better by Moody's and maturing no more than 360 days after the date of
 19 purchase (provided that ratings on holding companies are not considered as the rating of the
 20 bank); or (c) money market accounts or money market funds registered under the Federal
 21 Investment Company Act of 1940, whose shares are registered under the Securities Act, and rated
 22 "AAAm" or "AAAm-G" or better by S&P, and "Aaa," "Aal" or "Aa2" if rated by Moody's,

23 ¹ See *Childs v. Commissioner*, 103 T.C. 634 (1994), *aff'd*, 89 F.3d 856 (11th Cir. 1996).

24 ² Structured Settlement Payments are assigned to a qualified assignee by entering into qualified
 25 assignments of such structured settlement payments within the meaning of Section 130(c) of the
 26 Internal Revenue Code. The qualified assignee shall, respecting each person who is to receive
 27 periodic payments under a settlement agreement, purchase one or more qualified funding assets
 28 within the meaning of Section 130(d) of the Internal Revenue Code to fund any structured
 settlement payments assigned to the qualified assignee.

29 ³ A non-qualified assignment does not rely upon nor must it comply with Internal Revenue Code
 30 Section 104 and/or 130 to effect such assignment. See P.L.R. 200836019.

1 including any mutual fund for which the Fund Administrator or an affiliate of the Fund
 2 Administrator serves as investment manager, administrator, shareholder servicing agent, and/or
 3 custodian. Income realized by investment of the Fund shall be available to the Fund Administrator
 4 as payment for tax preparation and filing, quarterly and annual tax payments, general
 5 administration services including, without limitation, the fees and costs associated with
 6 investment advisors, accountants, agents, managers, attorneys, actuaries, auditors, or insurers,
 7 which are incurred to maintain and administer the Fund. Any investment losses realized by
 8 investment of Fund or any portion thereof shall be charged to the Fund. To the extent the Fund
 9 Administrator invests any funds in the manner provided for in this paragraph (“Eligible
 10 Investments”), Claimants’ Counsel, Defendant, and Fund Administrator shall not be liable for any
 11 loss(es) which may be incurred by reason of any such investment (or reinvestment) including, but
 12 not limited to, loss(es) that occur due to decreases in account value as a result of negative yields
 13 on direct or indirect investments in Eligible Investments. Such funds should be invested such that
 14 the following investment policy is implemented, as appropriate: (i) safety of principal; (ii) zero
 15 bank balance exposure through use of custodial/trust accounts (to avoid the risk of bank deposit
 16 forfeiture); and (iii) zero sweep disbursement accounts. In no instance will securities held
 17 pursuant to this agreement be lent or hypothecated. The Custodian shall be responsible for
 18 following the investment requirements of this paragraph, pursuant to the instructions of the Fund
 19 Administrator. Upon receipt of directions to distribute funds, the Fund Administrator may direct
 20 the Custodian to liquidate appropriate Fund investments and place the funds in an FDIC-insured
 21 demand deposit account established with the Custodian consistent with subparagraphs 12(c)
 22 above, which shall be a zero-balance account used solely for the purpose of making distributions
 23 from the Fund.

24 13. The Fund shall be held at Amegy Bank, a division of Zions Corp., NA, which is a
 25 financial institution doing business in the State of Texas (hereinafter “Custodian”), for the benefit
 26 of and titled in the legal name of the Fund according to the above terms and conditions and the
 27 Master Settlement Agreement, and said financial institution shall be responsible for any and all
 28 investment related decisions, pursuant to these terms and conditions. Notwithstanding the

1 forgoing, the Custodian shall not be allowed to distribute any income or principal from the Fund
 2 except upon the written instructions of the Fund Administrator upon written approval or
 3 authorization by Bard, or if requested, upon an order of this Court in accordance with, or as may
 4 be otherwise provided in, the Master Settlement Agreement.

5 14. Bard shall have no responsibility for the expenses or administration of the Fund
 6 and shall have no liability to the Claimants in connection with such administration or decisions
 7 made by the Fund Administrator in the discharge of any and all Settlement Administrators' duties.
 8 Said expenses, if any, may be paid out of the Settlement Amount deposited and held in the Fund.
 9 Bard shall cooperate in the administration of the Fund to the extent reasonably necessary to
 10 effectuate its terms, including providing all information reasonably necessary for the Fund
 11 Administrator to complete the Fund's accounting. Aside from the foregoing sentence and subject
 12 to Bard's rights under the Master Settlement Agreement, no relationships or responsibilities are
 13 created hereby between Bard and the Fund and its Fund Administrator. Bard shall in no way be
 14 associated with the administration of the Fund or be liable in respect of any dispute between or
 15 among any Claimants and their respective counsel in respect of any costs, expenses, legal fees or
 16 litigation costs to be deducted from the Fund.

17 15. Claimants request that the Fund Administrator be authorized to incur costs
 18 necessary to administer the Fund and hire professionals and other experts necessary to administer
 19 the Fund, including but not limited to, accountants, Special Masters, mediators or arbitrators, as
 20 necessary. Upon the satisfaction of all applicable terms and conditions set forth in the Master
 21 Settlement Agreement, all amounts to be paid from the Fund pursuant to the Master Settlement
 22 Agreement, including all expenses which may be incurred by the Fund Administrator and all costs
 23 associated with providing the agreed Releases shall be paid from the Fund or by Claimants'
 24 Counsel and shall not be the responsibility of Bard. Distribution of these Fund amounts shall not
 25 require further Court Order.

26 16. All taxes on the income component of the Fund and expenses and costs incurred in
 27 connection with the taxation of the Fund (including, without limitation, expenses of tax attorneys
 28 and accountants) shall be paid out of the Fund, shall be considered to be a cost of administration

1 of the settlement, and shall be timely paid by the Fund Administrator without prior order of the
 2 Court.

3 17. Subject to the terms and conditions in the Master Settlement Agreement, the Fund
 4 Administrator shall have the right to rely upon any affidavit, certificate, letter, notice, electronic
 5 mail, or other document believed by the Fund Administrator to be genuine and sufficient, and
 6 upon any other evidence believed by the Settlement Claims Administrator, in his reasonable
 7 judgment, to be genuine and sufficient, which may be provided to the Fund Administrator by the
 8 Claimants, Bard, or their counsel.

9 18. The Fund Administrator shall be authorized to distribute all attorneys' fees and
 10 expenses to counsel for Claimants consistent with existing contingency fee contracts, upon
 11 deposit of settlement proceeds in the Fund and satisfaction of the required terms of the Master
 12 Settlement Agreement. Court approval for such distributions shall only be required to the extent
 13 required by law for claims involving deaths and/or minors.

14 19. Upon completion of any structured settlements agreements and final distribution of
 15 monies paid from the Fund to eligible claimants under the terms of the Master Settlement
 16 Agreement, the Fund Administrator shall take appropriate steps to wind-down the Fund, including
 17 remitting unused funds back to Bard, as dictated by the Master Settlement Agreement and
 18 thereafter be discharged from any further responsibility with respect to the Fund.

19 20. To the extent any paragraphs in this Motion conflict or are in any way inconsistent
 20 with the terms and conditions of the Master Settlement Agreement, the Master Settlement
 21 Agreement controls.

22 21. The Fund Administrator will obtain a Federal Taxpayer Identification Number for
 23 the Fund that is the subject of this Motion, upon the execution of an order by the Court
 24 establishing the Fund.

25 22. WHEREFORE, Claimants respectfully request that the Court enter an Order:
 26 a. Establishing the Fund as a Qualified Settlement Fund within the meaning of Treas.
 27 Reg. Section 1.468B-1 and pursuant to the jurisdiction conferred on this Court by
 28 Treas. Reg. Section 1.468B-1(c)(1);

1 b. Appointing ARCHER as the Fund Administrator pursuant to the terms, conditions,
2 and restrictions of this Motion and granting said Fund Administrator the authority
3 to conduct any and all activities necessary to administer this Fund as described in
4 this Motion;

5 c. Authorizing the Fund, subject to the approval of and upon further order of this
6 Court following joint motion by Claimants and Bard under the terms and
7 conditions as set forth in the Master Settlement Agreement, to enter into individual
8 Releases with persons asserting Claims, including the use of settlements with
9 periodic payments and authorizing the Fund to effect qualified assignments of any
10 resulting structured settlement liability within the meaning of Section 130(c) of the
11 Internal Revenue Code to the qualified assignee; and

12 d. Authorizing the Fund Administrator, following completion of all structured
13 settlement agreements and final distribution of monies paid from the Fund to
14 eligible claimants under the terms of the Master Settlement Agreement, to take
15 appropriate steps to wind-down the fund, including remitting unused funds back to
16 Bard and thereafter discharging the Fund Administrator from any further
17 responsibility with respect to the Fund.

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19 Dated: March 31, 2021

/s/ Russell W. Budd

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CERTIFICATE OF SERVICE

I hereby certify that on March 31, 2021, I electronically filed the foregoing using the CM/ECF system, which will send notification of such filing to all counsel of record who have appeared.

/s/Russell W. Budd
Russell W. Budd